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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,394	02/28/2002	Jeffrey Batoff	NEXP-0005	8067

21302 7590 01/04/2008  
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EXAMINER
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BUCHANAN, CHRISTOPHER R

ART UNIT	PAPER NUMBER
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3627

MAIL DATE	DELIVERY MODE
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01/04/2008

PAPER

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

**MAILED**

Application Number: 10/085,394  
Filing Date: February 28, 2002  
Appellant(s): BATOFF, JEFFREY

JAN 04 2008

**GROUP 3600**

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For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed October 30, 2007 appealing from the Office action mailed April 3, 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

US 2004/0098317 A1

POSTREL

5-2004

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 63, 69, 87-90, 110, 112, 113, 115, 116, 118-120, and 188-263 are rejected under 35 U.S.C. 103(a) as being unpatentable over Postrel (US 2004/0098317 A1) alone.

Regarding claim 63, Postrel discloses a method of operating an electronic barter system that includes a first user listing items (i.e., awards or credits) on the barter system (p. 2 par. 14, see Fig. 6), the barter system determining and awarding the first user an amount of barter credit for the listed item (p. 2 par. 14, p. 4 par. 38, p. 6 par.

57), the barter system identifying at least one item listed on the system by other users that may be desirous to the first user (p. 3 par. 31, p. 4 par. 34), the first user selecting a desired item via the barter system (p. 4 par. 32, see Fig. 7), the barter system permitting a portion of the barter credit of the first user to be used toward acquisition of the desired item from the other user (p. 2 par. 16), wherein the other user is not required to acquire any item from the first user (p. 2 par. 16, p. 4 par. 32, see Fig. 4), and the barter system sending a request to the other user that listed the item to surrender the item (p. 4 par. 32).

The method of Postrel differs from the claimed invention in that the users are not explicitly shown to be consumers. However, it would be an obvious matter of design choice that the users could be of various types (consumers, producers, retailers, middlemen, etc.). It would have been obvious to one of ordinary skill in the art at the time the invention was made that the users could be consumers to enable direct consumer to consumer transfer of goods and services.

Regarding claim 69, the system provides incentives to the users (p. 5 par. 51, p. 6 par. 53). Regarding claims 87-90, the system puts items into categories (p. 5 par. 47) and offers items to the users based on search criteria, including category which would be an obvious design parameter. A variety of well-known means could be used to control inventory, such as first-in/first-out and grouping by UPC or similar numbers. Regarding claim 110, listing an item creates no obligation to surrender the item. Regarding claim 112, no limitations are placed on the levels of used and unused barter credit of system users (p. 5 par. 47). Regarding claim 113, the system determines

when the user must surrender an item (p. 4 par. 32). Regarding claim 115, it would be an obvious matter of design that user credit could be transferred to the system when a user account is closed (p. 5 par. 45+). Regarding claim 116, the system is Internet based (p. 2 par. 14). Regarding claims 118-120, communication between users and the system could be conducting using a variety of well-known means, such as telephone, wireless devices, portable devices, etc. (p. 2 par. 14).

Regarding claims 189-223, the features of the invention recited in claims 189-223 have already been addressed in the rejection of claims 63, 69, 87-90, 110, 112, 113, 115, 116, and 118-120 above, except for the barter system determining at least one condition under which a user must give up possession of an item (claims 188, 200, 220). The method of Postrel includes the barter system determining at least one condition under which a user must give up possession of an item (p. 2 par. 16, p. 4 par. 32). Regarding claims 224-234, the features of the invention recited in claims 224-234 have already been addressed in the rejection of claims 63, 69, 87-90, 110, 112, 113, 115, 116, and 118-120 above, except for the system only allowing entry of items listed in a lookup database (claim 224). The method of Postrel discloses items of different categories being entered into the system database (p. 5 par. 44+). It is well-known to organize inventory into categories in a lookup database (e-Bay, for example) and it would be a matter of design to require entry of items into a given category within the database. Regarding claims 235-246, the features of the invention recited in claims 235-246 have already been addressed in the rejection of claims 63, 69, 87-90, 110, 112, 113, 115, 116, and 118-120 above. Regarding claims 247-249, the features of the

invention recited in claims 247-249 have already been addressed in the rejection of claims 63, 69, 87-90, 110, 112, 113, 115, 116, and 118-120 above, except for the barter system determining the cost of postage, notifying the user of the cost, and compensating the user for a portion of the cost of postage. The method of Postrel includes creating a contract for delivery of the item (p. 5 par. 39), which is well-known include determining delivery costs, notifying customers of the cost, and possibly providing discount delivery costs (Amazon free delivery, for example). Regarding claims 250-252, the features of the invention recited in claims 250-252 have already been addressed in the rejection of claims 63, 69, 87-90, 110, 112, 113, 115, 116, and 118-120 above, except for the barter system monitoring user compliance with user obligations, which could include shipping items of a minimum quality and in a timely fashion. The method of Postrel includes user policies and conditions (p. 2 par. 16, p. 3 par. 33), which are well-known to include item quality and shipping timeliness (e-Bay user policies, for example). Regarding claims 253-263, the features of the invention recited in claims 253-263 have already been addressed in the rejection of claims 63, 69, 87-90, 110, 112, 113, 115, 116, 118-120, and 188-252 above.

#### **(10) Response to Argument**

Appellant's arguments have been fully considered but they are not persuasive. Appellant argues that the prior art reference does not disclose all the recited limitations of the claimed invention. In particular, that the prior art does not disclose a consumer listing items on an electronic barter system, determining and awarding to the consumer

an amount of barter credit for the listed items, or consumer to consumer transactions. Appellant further argues that the examiner fails to provide a reason to modify the system of Postrel to enable consumer to consumer transactions.

The examiner disagrees and stands by the rejection. Postrel discloses (par. 0014 lines 1-4) that a user may submit frequent flyer awards or credits for other types of transactions (i.e., items) for redemption or translation into a form readily acceptable by a merchant on the system. The examiner interprets this as listing items on an electronic barter system. Postrel also discloses (par. 14 lines 1-14) that the various items listed on the system will be translated, via an exchange rate, into an equivalent value of trading system credits. The examiner interprets this as determining and awarding to the consumer an amount of barter credit for the listed items. Lastly, the examiner states in the rejection above that the system users are not explicitly shown to be consumers, however, it would be an obvious matter of design choice that the users could be of various types (consumers, producers, retailers, middlemen, etc.). Since this limitation is considered to be a matter of design choice, it is not necessary to provide a reason for modification of the reference because the reference is not being modified to show this feature.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.



Art Unit: 3627

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

  
/Christopher R Buchanan/

Examiner, Art Unit 3627

Conferees:

/F. Ryan Zeender/

Supervisory Patent Examiner, Art Unit 3627

Vincent Millin 